

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 6TH DECEMBER 2007 / 15TH AGRAHAYANA 1929

CRP.No. 1070 of 2007

OS.2830/1999 OF PRL.MUNSIFF COURT,THRISSUR.

REVISION PETITIONERS/PETITIONERS/JUDGMENT DEBTORS:

1. SATHI, W/O. LATE MARATH AJAYAN,
MANALLOOR VILLAGE, KANJANI DESOM, THRISSUR TALUK.
2. SAJAN, S/O. LATE MARATH AJAYAN,
MANALLOOR VILLAGE, KANJANI DESOM, THRISSUR TALUK.
3. JITHIN, S/O. LATE MARATH AJAYAN,
MANALLOOR VILLAGE, KANJANI DESOM, THRISSUR TALUK.
4. SIJI, D/O. LATE MARATH AJAYAN,
MANALLOOR VILLAGE, KANJANI DESOM, THRISSUR TALUK.

BY ADV. SRI.K.B.MOHANDAS,
SRI.K.A.SREEJITH,
SRI.M.R.DHANIL,
SRI.LELLULAL T.G.THUNDATHIL.

RESPONDENT/RESPONDENT/DECREE HOLDER:

JAYASANKAR,S/O.POTTEKKATTIL DHAMODHARAN,
THANYAM VILLAGE, KIZHAKKUMURI DESOM,
THRISSUR TALUK, THRISSUR-680 565.

BY

THIS CIVIL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 06/12/2007,THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

M.N. KRISHNAN, J.
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C.R.P. NO. 1070 OF 2007
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Dated this the 6th day of December, 2007.

O R D E R

This revision petition is preferred against the order of the learned Munsiff in E.A.859/06 in E.A.1659/05 in E.A.482/04 in E.P.319/01 in O.S.2830/99. E.A.859/06 is filed with a prayer to hold that the petition E.A.1659/05 is not maintainable in law and therefore the same has to be set aside. The first contention raised was that the sale was conducted during the life time of the judgment debtor. But it was confirmed eight days after the death of the judgment debtor and therefore without impleading the legal representatives on record when the sale is confirmed it is invalid in law and therefore no proceedings could have been taken on the basis of such an invalid sale. So, the question for determination is what will be the legal impact of the confirmation of sale after the death of the judgment debtor if the same being conducted during his life time. This matter has come up before consideration before two High Courts. They are, one **AIR 1970 Bombay page 67(Motilal v.**

Sadabai) and the other, AIR 1973 A.P. 132(R. Rajamma v. A. Saraswathiamma). In both these decisions the point considered was that a sale confirmed after the death of the decree holder whether is valid or not. Both the Courts after elaborately dealing with the case laws on the subject arrived at a decision that when the sale is held during the judgment debtor's life time and is confirmed after the death of the judgment debtor the omission to bring the legal representatives on record will not vitiate the same. Therefore, that contention cannot be found in favour of the revision petitioner.

2. Then the other contentions raised are regarding the sale proceedings, inadequacy of consideration etc. That should have been a matter which could have been adjudicated by the judgment debtor under Order 21 Rule 90 CPC and when such a contention is not raised it will not be also available for the legal representatives because confirmation of sale is held to be valid in this case.

3. Lastly, the learned counsel has brought to my attention on the question of limitation. The learned counsel had produced the sale certificate issued by the Court which would indicate that the sale was confirmed on 1.8.03. The learned counsel would further contend that on 26.2.04 an application for delivery was filed which was within the period of limitation. But it was dismissed as not pressed. Subsequently, E.A.1659/05 is filed which ultimately is beyond the period of one year from the date of confirmation of sale. The learned counsel would contend that since it is beyond the period of one year and as the petition for delivery is to be filed within a period of one year from the date of confirmation of sale the petition for delivery is invalid and therefore delivery should not have been ordered by the Court. Article 134 mandates that the petition should be filed within one year when the sale becomes absolute. Though the learned Munsiff has written a very long order I find that he has not considered this very crucial point at all in deciding the matter. Therefore, the order under challenge is set aside to the

limited extend to consider the question of limitation. The Court below shall give a notice to the decree holder, fix a convenient date and take up the matter and decide the question of limitation after hearing both sides and in case of necessity if the parties want to adduce evidence they may be permitted to do so. I make it clear that all other points decided by the learned Munsiff is confirmed and the only point to be adjudicated is on the question of limitation. Thereafter, the learned Munsiff may proceed with the case in accordance with law.

The C.R.P. is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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